

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 35 of 1997

with

APPEAL FROM ORDER No 43 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
( No. 1 to 5 NO )

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RAMANBHAI MOHANBHAI PATEL

Versus

KHODABHAI FULABHAI PATEL

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Appearance:

1. Appeal from Order No. 35 of 1997  
MR PS CHAMPANERI for Petitioners
2. Appeal from OrderNo 43 of 1997  
MR PS CHAMPANERI for Petitioners  
MR BG PATEL for Respondent No. 1

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 03/03/97

ORAL JUDGEMENT

Present orders shall govern the disposal of these two Appeal From Orders, which are admitted and are being taken for final hearing with the consent of the counsels.

The land in dispute happens to be the land bearing Survey No. 140, admeasuring 2 acres & 22 gunthas, situated at village Haijarabad under Matar taluka of the Kheda district. Two suits came to be filed. In Appeal From Order No. 35 of 1997 the relevant suit would be Special Civil Suit No. 153 of 1996. The appellants had filed the said suit and had also submitted the necessary application at Exhibit-5. After hearing the parties, the said application at Exhibit-5 came to be decided and disposed of by the learned 6th Jt. Civil Judge (S.D.) Nadiad vide the orders dated December 20, 1996.

Upon a reference to these orders, it appears that the learned Civil Judge has noticed with pertinence the case and the defence of the parties. The rival contentions have been taken into consideration. The material which according to learned Civil Judge was in favour of the plaintiffs has been discussed. In the same way whatever was found to be in favour of the defendants has also been discussed. Any how, I failed to find a clear finding in this respect. It is true that in para-8 of the orders it has been said that, considering the facts of the case of the said suit and the other suit, namely Regular Civil Suit No. 459 of 1996 none of the parties was entitled to any interim relief. Any how the Court proceeds to say that " It was the moral duty of the Court to restrain the parties from quarrelling and therefore in the interest of natural justice the ultimate orders are being pronounced." When a reference is made to the ultimate orders, it is clear that the parties are directed to maintain the status-quo in respect of the land bearing Survey No. 140. As the Court below has not recorded any finding as to who is in the possession of the disputed land, the said orders appear to be innocuous. One would not be able to understand as to what was the status-quo and what status-quo has been ordered to be maintained. It is therefore clear that so far as Appeal From Order No. 35 of 1997 is concerned the only course open to this Court is to set aside the above said orders and to remand the matter to the Court below with a direction to decide the application Exhibit-5 according to law and on merits, after hearing the parties. I order accordingly. In the result therefore the Appeal From Order No. 35 of 1997 stands allowed in part. The impugned orders stand quashed and set aside and the matter stands remitted to the Court below, with a direction to decide the application Exhibit-5 according

to law and on merits. This should be done as early as possible and within a period of four weeks from the date of receipt of writ of the present orders.

Meanwhile, as soon as the writ is transmitted to the Court below, the said Court shall appoint a Commissioner-Cum-Receiver, who shall go on the spot after notifying the parties concerned and shall take the constructive possession of the land in dispute. If per chance some cattle are found to be on the spot, the same shall be restored to the custody of the respective party who should be the owner of the cattle. If the hut is still there the same could be locked by the Court Commissioner-Cum-Receiver and the key should be in his custody. This arrangement is only for a limited period till the remanded proceedings are decided by the Court below. The remuneration of the Court Commissioner-Cum-Receiver shall be borne by both the parties of 50 percent basis. Appeal From Order No. 35 of 1997 therefore stands disposed of in the above said manner.

So far as Appeal From Order No. 43 of 1997 is concerned, it requires to be appreciated that in Special Civil Suit No. 153 of 1996 the plaintiffs thereof have filed the suit for certain declaration and permanent prohibitory injunction. The application at Exhibit-5 also was submitted for temporary injunction. There was a dispute in respect of the standing paddy crop. The Court after hearing both the sides was pleased to allow the application at Exhibit-39 by saying that a Court Receiver is being appointed with a direction to take the standing paddy crop on the disputed land bearing Survey No. 140 through labourers and to sell the paddy crop and to deposit the sale proceeds before the Court within a period of fifteen days from the date of the orders. The said orders have been passed on December 24, 1996 and are in challenge in the Appeal From Order No. 43 of 1997.

It appears that the above said orders dated December 24, 1996 have not been executed by the Commissioner. There is a debate as to whether the crop on the said land is standing or not. The debate arises because learned counsel Mr. Champaneri says that the crop has been taken away. This proposition is being combated by learned counsel Mr. Patel.

Therefore in this matter also the very same Commissioner shall take the standing crop in his custody if the same exist on the land. The same shall be sold by the Commissioner and whatever sale proceeds are received shall be deposited by the Commissioner before the Court

below. If on the inspection and the visit of the site it is found that no standing crop is there on the disputed portion of the land, the Court Commissioner shall record a panchanama to the said effect and shall submit the same before the Court below. It shall be open for the parties to take appropriate action on the basis of such a report to be filed by the Commissioner.

Both the appeals stand disposed of with the above said orders.

Direct service permitted.

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